

SENATE BILL NO. 38

INTRODUCED BY A. CURTISS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING NURSERIES AND PLANT DEALERS; REVISING LICENSING PROVISIONS AND FEES APPLIED TO SELLERS OF NURSERY STOCK; EXEMPTING SELLERS OF CONIFEROUS CHRISTMAS DECORATIONS FROM LICENSING AND FEE PROVISIONS; AMENDING SECTIONS 80-7-105 AND SECTION 80-7-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 80-7-105, MCA, is amended to read:~~

~~"80-7-105. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Firm" means an individual, company, partnership, association, or corporation.~~

~~(2) "Landscape service" means a firm that buys, sells, or resells nursery stock.~~

~~(3) "Nursery" means the business or location where nursery stock is grown or offered for sale or resale or as part of a landscape service.~~

~~(4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass. The following plants and plant materials may not be considered nursery stock:~~

~~(a) field crop plants and seeds;~~

~~(b) pasture grasses;~~

~~(c) cut plants not for propagation;~~

~~(d) fruits or vegetables for human or animal consumption;~~

~~(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk;~~

~~(f) coniferous Christmas decorations; and~~

~~(f)(g) plant debris for disposal or processing.~~

~~(5) "Nursery stock certification" means the process by which the nursery stock or other plants have been~~

~~inspected and found to meet certification standards established by department rule.~~

~~———— (6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.~~

~~———— (7) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.~~

~~———— (8) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests."~~

Section 1. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required -- application and payment of license fee. (1) A firm, nursery, or plant dealer engaging in the business of selling or distributing nursery stock in this state shall obtain a license ~~for each location~~ from the department. IF THE FIRM, NURSERY, OR PLANT DEALER SELLS OR DISTRIBUTES NURSERY STOCK AT MORE THAN ONE LOCATION, THE FIRM, NURSERY, OR PLANT DEALER SHALL OBTAIN:

(A) ONE LICENSE IF ITS COMBINED ANNUAL GROSS SALES ARE LESS THAN \$10,000; AND

(B) A LICENSE FOR EACH LOCATION IF ITS GROSS ANNUAL SALES ARE \$10,000 OR MORE.

(2) The license must be in the name of the firm, nursery, or plant dealer seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

(3) (a) The department shall establish license fees by rule. License fees may be no less than \$95 or more than \$125. If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee within the statutory limit. A firm, nursery, or plant dealer that earns less than \$1,000 in gross annual sales of nursery stock MUST BE LICENSED BUT is exempt from licensing FEES.

(b) A firm, nursery, or plant dealer that earns \$1,000 but less than \$3,000 in gross annual sales of nursery stock shall pay a license fee of \$30 \$50.

(c) A firm, nursery, or plant dealer that earns \$3,000 or more BUT LESS THAN \$10,000 in gross annual

1 sales of nursery stock shall pay a license fee of ~~\$95~~ \$125.

2 (D) A FIRM, NURSERY, OR PLANT DEALER THAT EARNS \$10,000 OR MORE IN GROSS ANNUAL SALES OF NURSERY
3 STOCK SHALL PAY A LICENSE FEE OF \$160.

4 ~~(d)~~(E) The department may seek verification from the department of revenue as to whether the income
5 thresholds established in this section have been met.

6 (4) A new applicant or a firm, nursery, or plant dealer failing to renew a license on or before the annual
7 anniversary date provided for in subsection (2) shall pay an additional nonrefundable late fee of \$25 for each
8 license.

9 ~~(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery~~
10 ~~or plant dealer is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock~~
11 ~~and if that state extends a similar exemption to Montana firms.~~

12 ~~(6)~~(5) The fees required by the provisions of this section may be paid by credit card and may be
13 discounted for payment processing charges paid by the department to a third party."

14
15 COORDINATION SECTION. SECTION 2. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 478 IS NOT
16 PASSED AND APPROVED, THEN [THIS ACT] IS VOID.

17 (2) IF BOTH HOUSE BILL NO. 478 AND [THIS ACT] ARE PASSED AND APPROVED, THEN [SECTION 1] OF HOUSE BILL
18 NO. 478, AMENDING 80-7-105, IS VOID AND 80-7-105 MUST BE AMENDED AS FOLLOWS:

19 **"80-7-105. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
20 apply:

21 (1) "Firm" means an individual, company, partnership, association, or corporation.

22 (2) "Landscape service" means a firm that buys, sells, or resells nursery stock.

23 (3) "Nursery" means the business or location where nursery stock is grown or offered for sale or resale
24 or as part of a landscape service.

25 (4) "Nursery stock" means botanically classified plants or parts of plants, including but not limited to
26 tropical potted plants, aquatic plants, cut trees and their products, and turf or sod grass. The following plants and
27 plant materials may not be considered nursery stock:

28 (a) field crop plants and seeds;

29 (b) pasture grasses;

30 (c) cut plants not for propagation;

(d) fruits or vegetables for human or animal consumption;

(e) cut trees and products that are going to be processed to a point that they no longer represent a pest risk; and

(f) plant debris for disposal or processing.

(5) "Nursery stock certification" means the process by which the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(6) "Plant dealer" means a firm that buys plants or plant products from a producer for the purpose of offering the plants or plant products for sale or resale or as part of a landscape service.

(7) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(8) "Plant pest" means an insect, weed, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(8)(a)(i), or other exotic weeds are defined as plant pests.

(9) "Small plant vendor" means a Montana firm that is engaged in the business of selling or distributing nursery stock, including coniferous Christmas decorations, and that:

(a) grows in Montana the nursery stock offered for sale or distribution; and

(b) has gross annual sales of less than \$1,000 in a calendar year."

NEW SECTION. Section 3. Effective date. [This act] is effective ~~July 1, 2009~~ ON PASSAGE AND APPROVAL.

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